

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION**

KENDALL THOMAS,

PLAINTIFF

v.

CVS HEALTH SOLUTIONS, LLC,

DEFENDANT.

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CIVIL ACTION NO. _____

JURY DEMANDED

INDEX OF STATE COURT PLEADINGS AND FILING DATES

TAB NO.	DOCUMENT	DATE
1.	State Court's Docket Sheet	10/18/21
2.	Plaintiff's Original Petition	9/15/21
3.	Citation	9/15/21
4.	Citation Return	9/28/21
5.	Defendant CVS Health Solutions, LLC's Original Answer to Plaintiff's Original Petition	10/11/21
6.	Defendant CVS Health Solutions LLC's First Amended Answer to Plaintiff's Original Petition	10/20/21

TAB NO. 1

For documents, declarations, and orders in regards to COVID-19, click the link below. Monitor local news sources for continuing updates.

[COVID-19 Related Documents and Declarations](#)

(<https://co.jefferson.tx.us/documents/Coronavirus%20Docs/coronavirusdocs.htm>)

[Recertified Operating Plan for Conducting Jury Trials](#)

(https://co.jefferson.tx.us/documents/Coronavirus%20Docs/Recertified_JuryTrial_OperatingPlan_Jan2021.pdf)



District Clerk Online

Welcome, **John Scully**! My Transactions ([TransactionHistory.aspx](#)) | Log Off ([LogOff.aspx](#))

[Back to Case Results \(CaseSearchResults.aspx\)](#)

Civil Case '208324' documents:

Document Number	Document Name	Document Pages	Document Date	Add To Cart
2358909 (Document.aspx?PRJ=CIV&DN=2358909)	PETITION (PLAINTIFFS ORIGINAL)	8	09/15/2021	Add To Cart
2358910 (Document.aspx?PRJ=CIV&DN=2358910)	RECEIPT	1	09/15/2021	Add To Cart
2358938 (Document.aspx?PRJ=CIV&DN=2358938)	RETENTION LETTER	2	09/15/2021	Add To Cart
2358958 (Document.aspx?PRJ=CIV&DN=2358958)	CITATION	2	09/15/2021	Add To Cart
2363327 (Document.aspx?PRJ=CIV&DN=2363327)	CITATION (RETURN)	4	09/28/2021	Add To Cart
2367678 (Document.aspx?PRJ=CIV&DN=2367678)	ANSWER	3	10/11/2021	Add To Cart
2367679 (Document.aspx?PRJ=CIV&DN=2367679)	RECEIPT	1	10/11/2021	Add To Cart

2367841 (Document.aspx? PRJ=CIV&DN=2367841)	RECEIPT	1	10/11/2021	Add To Cart
2367843 (Document.aspx? PRJ=CIV&DN=2367843)	NOTICE (CHANGE OF ADDRESSPHONEFAX NO)	2	10/11/2021	Add To Cart
<< < Page 1 of 1 > >>				

Home (Home.aspx)

Reset Password (ResetPassword.aspx)

Change Email (ChangeEmail.aspx)

TAB NO. 2

FILED
DISTRICT CLERK OF
JEFFERSON CO TEXAS
9/14/2021 5:02 PM
JAMIE SMITH
DISTRICT CLERK
D-208324

CAUSE NO. D208324

KENDALL THOMAS
Plaintiff

VS.

CVS HEALTH SOLUTIONS, LLC
Defendant

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§
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IN THE DISTRICT COURT OF

JEFFERSON COUNTY, TEXAS

136th JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW the Plaintiff, KENDALL THOMAS , by counsel, and for her Complaint against the Defendants, CVS HEALTH SOLUTIONS, LLC and UNKNOWN PHARMACY TECHNICIAN (UNKNOWN EMPLOYEE), states as follows:

1. At all times relevant herein, Defendant CVS Health Solutions, LLC ("CVS") is a Texas Foreign Limited Liability Company, its Registered Agent for service is CT Corporation System, 1999 Bryant Street, Suite 900, Dallas, Texas 75201-3136.
2. At all times relevant herein, Defendant UNKNOWN PHARMACY TECHNICIAN(UNKNOWN EMPLOYEE) was and is employed as a pharmacist technician by Defendant CVS .
3. At all times relevant herein, Defendant UNKNOWN PHARMACY TECHNICIAN(UNKNOWN EMPLOYEE) was and is a resident of Jefferson County, Texas.
4. At the time of the incident giving rise to this Complaint, Defendant UNKNOWN PHARMACY TECHNICIAN(UNKNOWN EMPLOYEE) worked at Defendant CVS.'s store

pharmacy located at 2950 Dowlen Road, Beaumont, Texas 77706, located in Jefferson County, Texas.

5. At all times relevant herein, Plaintiff KENDALL THOMAS (“Thomas”) was and is a resident of Beaumont, Jefferson County, Texas.

6. At the time of the incident giving rise to this Complaint, Plaintiff KENDALL THOMAS was a customer of Defendant CVS and used Defendant CVS exclusively as her sole pharmaceutical provider.

7. On or about April 23, 2021, Defendant UNKNOWN PHARMACY TECHNICIAN (UNKNOWN EMPLOYEE), acting in the course and scope of her employment, accessed Plaintiff’s confidential, private patient information through the CVS computer system and, in so doing, reviewed Plaintiff’s prescription history.

8. On or about April 23, 2021, Defendant UNKNOWN PHARMACY TECHNICIAN(UNKNOWN EMPLOYEE) divulged certain contents of Plaintiff’s prescription history to an individual who appeared at the CVS Dowlen location.

9. Defendant, UNKNOWN PHARMACY TECHNICIAN, did not obtain proof of identity now require any signature indicating release of Plaintiff’s confidential prescription history.

COUNT ONE – RESPONDENT SUPERIOR (CVS)

10. Plaintiff hereby incorporates the foregoing paragraphs 1-9 as if set forth fully herein.

11. As a provider of pharmaceutical services, Defendant CVS owes a non-delegable duty to its customers to protect the privacy and confidentiality of its customers' pharmaceutical information and prescription histories.

12. The above-described acts of Defendant UNKNOWN PHARMACY TECHNICIAN(UNKNOWN EMPLOYEE) were done in the course and scope of her employment with Defendant CVS.

13. By and through its employee, Defendant CVS breached its statutory and common law duties of confidentiality and privacy to Plaintiff.

14. As a direct and proximate result of this breach, Plaintiff has suffered damages.

WHEREFORE, Plaintiff KENDALL THOMAS hereby demands judgment against Defendant CVS, for costs and interest, for a reasonable attorney's fee, and for all other just and proper relief.

COUNT TWO – NEGLIGENT TRAINING, SUPERVISION, AND RETENTION (CVS)

15. Plaintiff hereby incorporates the foregoing paragraphs 1-14 as if set forth fully herein.

16. As a provider of pharmaceutical services, Defendant CVS owes a duty to its customers to properly train its pharmacists and technicians including training and instruction in the protection of customer privacy and confidentiality.

17. Defendant CVS breached its duty to Plaintiff in the training and instruction of its employee UNKNOWN PHARMACY TECHNICIAN (UNKNOWN EMPLOYEE) in the protection of customer privacy and confidentiality.

18. As a provider of pharmaceutical services, Defendant CVS owes a duty to its customers to properly supervise its pharmacists and technicians in the performance of the pharmacists' and technicians' job duties and responsibilities.

19. Defendant CVS breached its duty to Plaintiff in the supervision of its employee UNKNOWN PHARMACY TECHNICIAN (UNKNOWN EMPLOYEE).

20. As a provider of pharmaceutical services, Defendant CVS owes a duty to its customers to take appropriate steps and implement appropriate measures for the protection of its customers after learning of an employee's misuse or abuse of authority granted in the course and scope of employment.

21. Defendant CVS continued to employ Defendant UNKNOWN PHARMACY TECHNICIAN (UNKNOWN EMPLOYEE) as a pharmacist technician, and Defendant UNKNOWN PHARMACY TECHNICIAN (UNKNOWN EMPLOYEE) continued to have access to Plaintiff's confidential and private pharmaceutical information and prescription history months after the breach.

22. Defendant CVS breached its duty to Plaintiff to take appropriate steps and implement appropriate measures for the protection of Plaintiff's privacy and confidentiality after learning of

UNKNOWN PHARMACY TECHNICIAN(UNKNOWN EMPLOYEE) above-described conduct.

23. Defendant CVS attempted to coverup the actions of UNKNOWN PHARMACY TECHNICIAN(UNKNOWN EMPLOYEE) and sought to withhold information from Plaintiff and law enforcement.

24. As a direct and proximate result of Defendant CVS's above-described negligence, Plaintiff has suffered damages.

WHEREFORE, Plaintiff KENDALL THOMAS hereby demands judgment against Defendant CVS, for costs and interest, for a reasonable attorney's fee, and for all other just and proper relief.

**COUNT THREE – NEGLIGENCE, INVASION OF PRIVACY, PUBLIC DISCLOSURE
OF PRIVATE FACTS (UNKNOWN PHARMACY TECHNICIAN
(UNKNOWN EMPLOYEE))**

25. Plaintiff hereby incorporates the foregoing paragraphs 1-24 as if set forth fully herein.

26. As a pharmacist licensed to practice in the state of Texas, Defendant UNKNOWN PHARMACY TECHNICIAN (UNKNOWN EMPLOYEE) owes a non-delegable duty to her customers to protect the privacy and confidentiality of her customers' pharmaceutical information and prescription histories.

27. By providing Plaintiff's private and confidential pharmaceutical information and prescription history to an unauthorized, Defendant UNKNOWN PHARMACY TECHNICIAN (UNKNOWN EMPLOYEE) breached her statutory and common law duties of confidentiality and privacy to Plaintiff.

28. As a direct and proximate result of the above-described breaches, Plaintiff has suffered damages.

REQUEST FOR DISCLOSURE

29. Pursuant to Rule 194, Texas Rules of Civil Procedure, Plaintiff is requested to disclose, within the time parameters described by Rule 194.3, Texas Rules of Civil Procedure, the information or materials described in Rule 194.2, Texas Rules of Civil Procedure.

Wherefor premises considered, Plaintiff prays that citation issue and be served upon Defendant CVS requiring Defendant to appear and answer herein. That upon consideration hereof by the Court of the jury, Plaintiff has and recovers judgment of, from and against Defendants, jointly and severally, as follows:

1. Actual damages in the amount in excess of the minimum jurisdiction limits of this Court;
2. Prejudgment and post judgment interest as allowed by law;
3. Exemplary and statutory damages as allowed by law in an amount in excess of
\$1,000,000.00;
4. Mental anguish damages in excess of \$500,000.00;
5. Reasonable and necessary attorney fees;

6. Costs of Court;
7. Judgment for all other appropriate equitable relief; and for such other and further relief,

both general and special, at law and in equity, two which Plaintiff is justly entitled.

JURY DEMAND

COMES NOW the Plaintiff, KENDALL THOMAS, by counsel, and hereby requests trial

by jury.

Respectfully submitted,

CARRIER & ALLISON LAW GROUP, P.C.
505 Orleans, Suite 503
Beaumont, Texas 77701
Tel: (409) 835-8330
Fax: (409) 835-8370

By: /s/ Melody Carrier

Melody Carrier
State Bar No. 00785096
mcarrier@caflawgroup.com
Attorneys for KENDALL THOMAS

TAB NO. 3

Citation by Mailing

THE STATE OF TEXAS

No. D-0208324

KENDALL THOMAS
VS. CVS HEALTH SOLUTIONS LLC

CITATION BY MAILING

**136th JUDICIAL DISTRICT COURT
of JEFFERSON COUNTY, TEXAS**

To: CVS HEALTH SOLUTIONS LLC
BY SERVING ITS REGISTERED AGENT, CT CORPORATION SYSTEM

by serving at:
1999 BRYAN STREET
SUITE 900
DALLAS, TX 75201 3136

DEFENDANT:**NOTICE:**

You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you. In addition to filing a written answer with the clerk, you may be required to make initial disclosures to the other parties of this suit. These disclosures generally must be made no later than 30 days after you file your answer with the clerk. Find out more at TexasLawHelp.org. Said answer may be filed by E-filing through efiletexas.gov, if represented by an attorney; or if filed pro se by delivering or mailing same to: District Clerk's Office, 1085 Pearl, Room 203, Beaumont, TX 77701. The case is presently pending before the 136th District Court of Jefferson County sitting in Beaumont, Texas, and was filed on the 14th day of September, 2021. It bears cause number D-0208324 and is styled:

KENDALL THOMAS
VS.
CVS HEALTH SOLUTIONS LLC

Plaintiff:

Defendant:

The name and address of the attorney for plaintiff (or plaintiff, if pro se) is:

CARRIER, MELODY G, Atty.
CARRIER & ALLISON LAW GROUP 505 ORLEANS, SUITE 503
BEAUMONT, TX 77701 0

The nature of the demands of said plaintiff is shown by a true and correct copy of Plaintiff's PETITION (PLAINTIFF'S ORIGINAL) accompanying this citation and made a part thereof.

Issued under my hand and the seal of said court, at Beaumont, Texas, this the 15th day of September, 2021.

JAMIE SMITH, DISTRICT CLERK
JEFFERSON COUNTY, TEXAS



BY

Deputy

Jennifer

RETURN OF SERVICE

D-0208324 136th JUDICIAL DISTRICT COURT

KENDALL THOMAS

CVS HEALTH SOLUTIONS LLC

Executed when copy was delivered:

This is a true copy of the original citation, was delivered to defendant _____, on the _____ day of _____, 20____.

_____, Officer

_____, County, Texas

By: _____, Deputy

ADDRESS FOR SERVICE:

CVS HEALTH SOLUTIONS LLC

BY SERVING ITS REGISTERED AGENT, CT CORPORATION SYSTEM

1999 BRYAN STREET

SUITE 900

DALLAS, TX 75201 3136

OFFICER'S RETURN

Came to hand on the _____ day of _____, 20____, at _____, o'clock ____m., and executed in _____, County, Texas by delivering to each of the within named defendants in person, a true copy of this Citation with the date of delivery endorsed thereon, together with the accompanying copy of the Citation by Mailing at the following times and places, to-wit:

Name	Date/Time	Place, Course and Distance from Courthouse
_____	_____	_____

And not executed as to the defendant(s), _____

The diligence used in finding said defendant(s) being:

_____ and the cause or failure to execute this process is:

_____ and the information received as to the whereabouts of said defendant(s) being:

FEES:

Serving Petition and Copy \$ _____

Total \$ _____

_____, Officer

_____, County, Texas

By: _____, Deputy

Affiant**COMPLETE IF YOU ARE A PERSON OTHER THAN A SHERIFF, CONSTABLE, OR CLERK OF THE COURT.**

In accordance with Rule 107: The officer of authorized person who serves, or attempts to serve, a citation shall sign and return. The signature is not required to be verified. If the return is signed by a person other than a sheriff, constable or the clerk of the court, the return shall be signed under penalty of perjury and contain the following statement:

"My name is _____, my date of birth is _____, and my address is _____
(First, Middle, Last)

(Street, City, Zip)

I DECLARE UNDER PENALTY OF PERJURY THAT THE FORGOING IS TRUE AND CORRECT.

Executed in _____, County, State of _____, on the _____ day of _____.

Declarant/Authorized Process Server_____
(Id # expiration of certification)

TAB NO. 4

Citation by Mailing

DISTRICT CLERK
JEFFERSON CO TEXAS
9/28/2021 9:06 AM
JAMIE SMITH
DISTRICT CLERK
D-208324

THE STATE OF TEXAS

No. D-0208324

KENDALL THOMAS
VS. CVS HEALTH SOLUTIONS LLC

CITATION BY MAILING

**136th JUDICIAL DISTRICT COURT
of JEFFERSON COUNTY, TEXAS**

To: CVS HEALTH SOLUTIONS LLC
BY SERVING ITS REGISTERED AGENT, CT CORPORATION SYSTEM

by serving at:
1999 BRYAN STREET
SUITE 900
DALLAS, TX 75201 3136

DEFENDANT:**NOTICE:**

You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you. In addition to filing a written answer with the clerk, you may be required to make initial disclosures to the other parties of this suit. These disclosures generally must be made no later than 30 days after you file your answer with the clerk. Find out more at TexasLawHelp.org. Said answer may be filed by E-filing through efiletexas.gov, if represented by an attorney; or if filed pro se by delivering or mailing same to: District Clerk's Office, 1085 Pearl, Room 203, Beaumont, TX 77701. The case is presently pending before the 136th District Court of Jefferson County sitting in Beaumont, Texas, and was filed on the 14th day of September, 2021. It bears cause number D-0208324 and is styled:

KENDALL THOMAS
VS.
CVS HEALTH SOLUTIONS LLC

Plaintiff:

Defendant:

The name and address of the attorney for plaintiff (or plaintiff, if pro se) is:

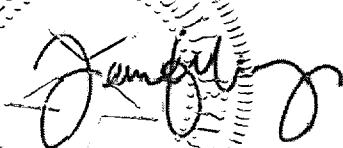
CARRIER, MELODY G, Atty.
CARRIER & ALLISON LAW GROUP 505 ORLEANS, SUITE 503
BEAUMONT, TX 77701 0

The nature of the demands of said plaintiff is shown by a true and correct copy of Plaintiff's PETITION (PLAINTIFF'S ORIGINAL) accompanying this citation and made a part thereof.

Issued under my hand and the seal of said court, at Beaumont, Texas, this the 15th day of September, 2021.

JAMIE SMITH, DISTRICT CLERK
JEFFERSON COUNTY, TEXAS



BY 
Jennifer

Deputy

RETURN OF SERVICE

D-0208324 136th JUDICIAL DISTRICT COURT

KENDALL THOMAS

CVS HEALTH SOLUTIONS LLC

Executed when copy was delivered:

This is a true copy of the original citation, was delivered to defendant CVS Health Solutions LLC on the 20th day of Sept, 2021._____, Officer
Jefferson, County, Texas
By: _____, Deputy**ADDRESS FOR SERVICE:**

CVS HEALTH SOLUTIONS LLC

BY SERVING ITS REGISTERED AGENT, CT CORPORATION SYSTEM

1999 BRYAN STREET

SUITE 900

DALLAS, TX 75201 3136

OFFICER'S RETURNCame to hand on the 22nd day of September, 2021, at _____, o'clock ____m., and executed in Jefferson, County, Texas by delivering to each of the within named defendants in person, a true copy of this Citation with the date of delivery endorsed thereon, together with the accompanying copy of the Citation by Mailing at the following times and places, to-wit:

Name	Date/Time	Place, Course and Distance from Courthouse
<u>CVS Health Solutions LLC</u>	<u>Sept 20, 2021 10:19am</u>	<u>1999 Bryan St, Ste 900, Dallas, TX 75201</u>

And not executed as to the defendant(s), _____

The diligence used in finding said defendant(s) being:

CM/IRER

and the cause or failure to execute this process is:

and the information received as to the whereabouts of said defendant(s) being:

FEES:Serving Petition and Copy \$ 75Total \$ 75_____, Officer
Jefferson, County, Texas

By: _____, Deputy

Affiant

COMPLETE IF YOU ARE A PERSON OTHER THAN A SHERIFF, CONSTABLE, OR CLERK OF THE COURT.

In accordance with Rule 107: The officer or authorized person who serves, or attempts to serve, a citation shall sign and return. The signature is not required to be verified. If the return is signed by a person other than a sheriff, constable or the clerk of the court, the return shall be signed under penalty of perjury and contain the following statement:

"My name is _____, my date of birth is _____, and my address is _____
(First, Middle, Last)

(Street, City, Zip)

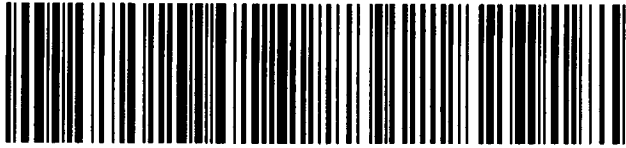
I DECLARE UNDER PENALTY OF PERJURY THAT THE FORGOING IS TRUE AND CORRECT.

Executed in _____, County, State of _____, on the _____ day of _____.

Declarant/Authorized Process Server

(Id # expiration of certification)

JAMIE SMITH
DISTRICT CLERK, JEFFERSON COUN
1085 PEARL ST RM 203
BEAUMONT, TX 77701-3545



9214 8901 0661 5400 0166 5877 17

RETURN RECEIPT (ELECTRONIC)

CVS HEALTH SOLUTIONS LLC
REGISTERED AGENT, CT CORPORATION SYSTEM
1999 BRYAN ST STE 900
DALLAS, TX 75201-3140

.....
CUT / FOLD HERE

Zone 3

.....
6"x9" ENVELOPE
CUT / FOLD HERE

.....
CUT / FOLD HERE



September 20, 2021

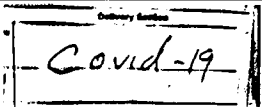
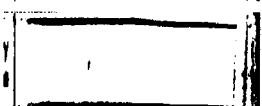
Dear MAIL MAIL:

The following is in response to your request for proof of delivery on your item with the tracking number:
9214 8901 0661 5400 0166 5877 17.

Item Details

Status:	Delivered
Status Date / Time:	September 20, 2021, 10:19 am
Location:	DALLAS, TX 75201
Postal Product:	First-Class Mail®
Extra Services:	Certified Mail™ Return Receipt Electronic
Recipient Name:	CVS HEALTH SOLUTIONS LLC

Recipient Signature

Signature of Recipient:	
Address of Recipient:	

Note: Scanned image may reflect a different destination address due to Intended Recipient's delivery instructions on file.

Thank you for selecting the United States Postal Service® for your mailing needs. If you require additional assistance, please contact your local Post Office™ or a Postal representative at 1-800-222-1811.

Sincerely,
United States Postal Service®
475 L'Enfant Plaza SW
Washington, D.C. 20260-0004

The customer reference information shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.

Reference ID: 92148901066154000166587717

CVS HEALTH SOLUTIONS LLC
Registered Agent, CT Corporation System
1999 Bryan St Ste 900
Dallas, TX 75201-3140

TAB NO. 5

CAUSE NO. D208324

KENDALL THOMAS	§	IN THE DISTRICT COURT
	§	
v.	§	136th JUDICIAL DISTRICT
	§	
CVS HEALTH SOLUTIONS, LLC	§	JEFFERSON COUNTY, TEXAS

**DEFENDANT CVS HEALTH SOLUTIONS, LLC'S
ORIGINAL ANSWER TO PLAINTIFF'S ORIGINAL PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, CVS Health Solutions, LLC (hereinafter "Defendant"), Defendant in the above-styled and numbered cause, and files this Original Answer, and in support thereof would respectfully show unto the Court the following:

I. GENERAL DENIAL

1. Defendant denies each and every, all and singular, the material allegations made and contained in the Original Petition and any petition which Plaintiff may hereinafter file by way of amendment or supplement, and, in accordance with Texas law, demands that Plaintiff prove by a preponderance of the credible evidence, or the prevailing standard of proof required by applicable law, each and every such allegation made and contained therein.

WHEREFORE, PREMISES CONSIDERED, Defendant prays that upon final hearing and trial hereof, Plaintiff takes nothing by this suit against Defendant and that Defendant go hence without day and with all costs on its behalf incurred, and that the Court grant such other and further relief, both general and special, at law and in equity, to which Defendant may be justly entitled to receive.

Respectfully submitted,

COOPER & SCULLY, P.C.

/s/ John A. Scully

JOHN A. SCULLY

State Bar No. 17936500

john.scully@cooperscully.com

NISHA P. BYERS

Texas State Bar No. 00791460

nisha.byers@cooperscully.com

900 Jackson Street, Suite 100

Dallas, Texas 75202

Telephone: 214-712-9500

Facsimile: 214-712-9540

**ATTORNEYS FOR DEFENDANT
CVS HEALTH SOLUTIONS, LLC**

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of October, 2021, a true and correct copy of the foregoing document was served on all counsel of record by electronic court filing:

Melody Carrier
Carrier & Allison Law Group, P.C.
505 Orleans, Suite 503
Beaumont, Texas 7701
Telephone: (409) 835-8330
Fax: (409) 835-8370
mcarrier@caflawgroup.com

/s/ Nisha P. Byers

Nisha P. Byers

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Valerie Eckardt on behalf of Nisha Byers
 Bar No. 791460
 valerie.eckardt@cooperscully.com
 Envelope ID: 58051337
 Status as of 10/11/2021 10:01 AM CST

Associated Case Party: KENDALLTHOMAS

Name	BarNumber	Email	TimestampSubmitted	Status
Melody Carrier		mcarrier@caflawgroup.com	10/11/2021 9:36:47 AM	SENT
Sadie Lupo		sadie@caflawgroup.com	10/11/2021 9:36:47 AM	SENT

Associated Case Party: CVS HEALTH SOLUTIONS LLC

Name	BarNumber	Email	TimestampSubmitted	Status
Nisha P.Byers		nisha.byers@cooperscully.com	10/11/2021 9:36:47 AM	SENT
John A.Scully		john.scully@cooperscully.com	10/11/2021 9:36:47 AM	SENT

TAB NO. 6

CAUSE NO. D208324

KENDALL THOMAS	§	IN THE DISTRICT COURT
	§	
v.	§	136th JUDICIAL DISTRICT
	§	
CVS HEALTH SOLUTIONS, LLC	§	JEFFERSON COUNTY, TEXAS

**DEFENDANT CVS HEALTH SOLUTIONS LLC'S
FIRST AMENDED ORIGINAL ANSWER TO PLAINTIFF'S ORIGINAL PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, CVS Health Solutions LLC (incorrectly named as CVS Health Solutions, LLC, and hereinafter "Defendant"), Defendant in the above-styled and numbered cause, and files this First Amended Original Answer, and in support thereof would respectfully show unto the Court the following:

I. GENERAL DENIAL

1. Defendant denies each and every, all and singular, the material allegations made and contained in the Original Petition and any petition which Plaintiff may hereinafter file by way of amendment or supplement, and, in accordance with Texas law, demands that Plaintiff prove by a preponderance of the credible evidence, or the prevailing standard of proof required by applicable law, each and every such allegation made and contained therein.

II. VERIFIED DENIAL

2. Pursuant to Texas Rule of Civil Procedure 93, Defendant files this verified denial, in which it specifically denies that it is a proper party to this lawsuit. CVS Health Solutions LLC does not own or operate the pharmacy located at 2950 Dowlen Road, Beaumont, Texas 77706.

III. DEFENSES

3. Defendant asserts its rights, pursuant to Chapters 32 and 33 of the Texas Civil Practice & Remedies Code, to pursue a percentage reduction, monetary credit, offset, liability limit, or relief provided under the laws of Texas for settlement agreements between parties and/or potential parties to this suit, any jury verdict, and contribution.

4. Defendant further pleads that, if another Defendant or person or entity pays or promises to pay money or anything of monetary value to Plaintiff in consideration of potential liability for the claims and damages asserted in this suit, Defendant reserves its right to seek submission of those settling persons in the court's charge to the jury and asserts its entitlement to a full credit, offset, pro rata reduction, or percentage reduction based upon the percentage of causation or responsibility attributable to the settling persons. Defendant invokes its rights under Chapter 33 of the Texas Civil Practice and Remedies Code, including but not limited to sections 33.012 and 33.015. This election of credit includes, but it is not limited to, all amounts previously paid or promised to be paid in settlement.

5. Pleading further, to the extent Plaintiff's claimed medical expenses exceed the amount actually paid on Plaintiff's behalf to her medical providers, Defendant asserts the statutory defense set forth in Section 41.0105 of the *Texas Civil Practice and Remedies Code*. Thus, recovery of medical or health care expenses incurred by Plaintiff, if any, is limited to the amount actually paid or incurred by or on behalf of Plaintiff.

6. Pleading further, Defendant invokes, if necessary, the limitations on prejudgment interest under Chapter 304 of the Texas Finance Code and Chapter 41 of the *Texas Civil Practice and Remedies Code*, and any other applicable statute or common-law rule.

7. Pleading further and in the alternative, Defendant states that the alleged occurrence, incident, event or accident made the basis of this suit may have been caused by the acts or omissions of a third party or third parties over whom Defendant had no control and said acts or omissions were the proximate cause, or in the alternative, the sole proximate cause of the occurrence, incident, event or accident made the basis of this suit and of the alleged damages to Plaintiff.

8. Defendant further invokes section 18.091 of the Texas Civil Practice and Remedies Code and requests an instruction as to whether any recovery for compensatory damages sought by Plaintiff is subject to income taxes.

9. Defendant asserts it is entitled to the limitation on the accrual of post-judgment interest on any award of damages subject to a Medicare subrogation right under 42 U.S.C. § 1395y(b)(2)(B), as provided in section 41.014 of the Texas Civil Practice and Remedies Code.

10. Pleading further and in the alternative, Defendant alleges that any claims for or recovery of exemplary damages against it violates the Fifth, Eighth, and Fourteenth Amendments to the United States Constitution, and Sections 3, 13 and 19 of Article I of the Texas Constitution, because such claims as made are arbitrary, unreasonable, and violate Defendant's rights to due process and equal protection of the laws.

11. Pleading further and in the alternative, to the extent any recovery of exemplary damages is found to be constitutional, Defendant invokes all the limitations upon damages and exemplary damages contained in Chapter 41 of the Texas Civil Practice & Remedies Code, both in terms of the maximum amount of damages that can be awarded pursuant to that statute and the procedural safeguards guaranteed by the referenced provisions.

12. Pleading further and in the alternative, Defendant also invokes all other applicable state law, federal law, statutory and/or common-law caps or limitations on exemplary damages.

WHEREFORE, PREMISES CONSIDERED, Defendant prays that upon final hearing and trial hereof, Plaintiff takes nothing by this suit against Defendant and that Defendant go hence without day and with all costs on its behalf incurred, and that the Court grant such other and further relief, both general and special, at law and in equity, to which Defendant may be justly entitled to receive.

Respectfully submitted,

COOPER & SCULLY, P.C.

/s/ John A. Scully

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**ATTORNEYS FOR DEFENDANT
CVS HEALTH SOLUTIONS LLC**

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of October, 2021, a true and correct copy of the foregoing document was served on all counsel of record by electronic court filing:

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mcarrier@caflawgroup.com

/s/ Nisha P. Byers

Nisha P. Byers

CAUSE NO. D208324

KENDALL THOMAS

v.

CVS HEALTH SOLUTIONS, LLC

§
§
§
§
§

IN THE DISTRICT COURT

136th JUDICIAL DISTRICT

JEFFERSON COUNTY, TEXAS

VERIFICATION

STATE OF RHODE ISLAND §

COUNTY OF PROVIDENCE §

BEFORE ME, the undersigned authority, did personally appear Thomas S. Moffatt, who being by me first duly sworn, stated and deposed under oath as follows:

"My name is Thomas S. Moffatt. I am the Vice President and Secretary of CVS Health Solutions LLC, am over the age of 21, and am duly qualified and authorized in all respects to make this verification. I have read the facts set forth in Defendant CVS Health Solution LLC's Original Answer and Verified Denial in the above-referenced matter and verify that the statements contained in paragraph 2 of Defendant CVS Health Solutions LLC's Original Answer and Verified Denial are within my knowledge and true and correct."



Thomas S. Moffatt

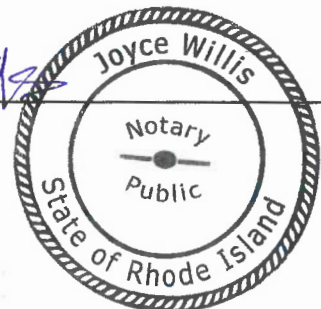
SUBSCRIBED AND SWORN TO before me this 20th day of October, 2021.

Notary Public, State of Rhode Island

My Commission Expires:

10/14/2023

Joyce Willis
Notary Public
State of Rhode Island
Comm Exp. 10/14/2023



Eckardt, Valerie

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